

## STATEMENTS IN IME PHYSICIAN'S REPORT CREATED IN COURSE OF PRIVATE ARBITRATION PROCEEDING ARE PROTECTED BY ABSOLUTE PRIVILEGE

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*Yeung v. Maric*

Ct. Appeals, Div. One, June 8, 2010

Authored by the [JSH Appellate Team](#)

Dr. Maric performed an IME on a claimant who was involved in an accident with an uninsured/underinsured motorist. The case was to be adjudicated in private, contractual arbitration. Dr. Maric opined that the accident was not a cause of the claimant's injuries, and in his IME report criticized the reasonableness and necessity of the treating physician's care and treatment of the claimant.

The treating physician sued Dr. Maric for defamation and false light invasion of privacy. Dr. Maric argued his comments were privileged under the precept that the comments of witnesses to judicial proceedings are absolutely privileged. The court of appeals agreed, rejecting the argument that private arbitrations are not protected by the judicial safeguards attending cases in superior court. Statements made in a quasi-judicial setting, such as a private, contractual arbitrations, are absolutely privileged if the statements: 1) relate to the case, and 2) are made in anticipation, or serious contemplation, of a judicial or quasi-judicial proceeding. An arbitration provides notice, entitles the parties to present evidence, allows for representation by an attorney, and allows the arbitrator to issue subpoenas. These safeguards are sufficiently analogous to a judicial proceeding to apply the absolute privilege. Further, litigation was seriously contemplated at the time of the IME, because Dr. Maric testified he thought the case was in court at the time.